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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,117	05/30/2001	Glenn Schiavo	CLX-602	6527
7590	05/04/2005		EXAMINER	
Ray K. Shahani, Esq. Attorney at Law Twin Oaks Office Plaza 477 Ninth Avenue, Suite 112 San Mateo, CA 94402-1854			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	
			DATE MAILED: 05/04/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/870,117	SCHIAVO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 18 January 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2,5,6 and 10-21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4 and 7-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-21 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 December 1998 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/29/01</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

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Applicant's election of Group I in the reply filed on 1/18/05 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

No species everselected; the requirement stands.

Claims 2, 5, 6, 10-21 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/18/05.

No amendment of either claims or specification was presented, although attorney argues amendments should be entered and claims allowed. Claim as presented as of filing May 30/2001 are examined.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 4, 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agrevo or Deven et al WO 00/51747 in view of Van der Heyden-5000383.

Agrevo discloses the instant emanator (picture, page 3) showing bubble-jet forms, with mosquito control effected by (p.2) providing low aerial concentrations of insecticides (p.3) pyrethroids, vaporized-capillary tubes carry the solvent/pesticide to

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vaporization area. Control is possible by adjusting pesticide concentration and evaporation rate (p.4). However, specific droplet size, gas and temperature of insecticide were unstated. Since pyrethroids of the instant and used, the vaporization would be the same, and temperature of release is controllable by artisan, thus able to be 30° or more below decomposition temperature, in order to provide efficacy of the insecticide.

Deven also shows an emarator, for release of perfumes or insecticides in the form of fine droplets (p.1), from a liquid reservoirs (p.11). The device is not described as bubble jet.

Van der Heyden does show an insecticidal (col.1, lines13-18) bubble jet emanator (figures) and provides for gas (air) entry into the fluid reservoir (col.5, lines 16-50).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize insecticide compositions to use of Agrevo or Denen modified as taught by Van der Heyden, in order to provide odorous protection against Mosquitoes.

There is no non-obvious and/or unexpected results obtained since the prior art is well versed in the art of applying insect vaporized pyrethroids.

The selection of each component and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use of component for the functionality for which they are known to be used is not a basis for patentability.

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Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or form thereof provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over pests as is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL S. LEVY  
PRIMARY EXAMINER